

BRB No. 04-0876

HARRIET TILLMAN	)	
(Widow of HENRY TILLMAN)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BATON ROUGE MARINE	)	
CONTRACTORS, INCORPORATED	)	DATE ISSUED: 07/22/2005
	)	
and	)	
	)	
SIGNAL MUTUAL INDEMNITY	)	
ASSOCIATION, LIMITED	)	
	)	
and	)	
	)	
NORTH RIVER INSURANCE COMPANY	)	
	)	
and	)	
	)	
LOUISIANA INSURANCE GUARANTY	)	
ASSOCIATION	)	
	)	
and	)	
	)	
NATIONAL BEN FRANKLIN OF	)	
PITTSBURGH, PENNSYLVANIA/	)	
FIDELITY AND CASUALTY COMPANY	)	
OF NEW YORK	)	
	)	
	)	
Employer/Carriers-	)	
Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

Sharah Harris-Wallace, Plaquemine, Louisiana, for claimant.

Traci Castille (Franke, Rainey & Salloum, PLLC), Gulfport, Mississippi, for employer and Signal Mutual Indemnity Association, Limited.

Robert E. Thomas (Cornelius, Sartin & Murphy), New Orleans, Louisiana, for employer and National Ben Franklin of Pittsburgh, Pennsylvania/Fidelity & Casualty Company of New York.

Before: DOLDER, Chief Administrative Appeals Judge, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2003-LHC-1606) of Administrative Law Judge C. Richard Avery rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

The deceased longshoreman was a forklift operator who worked for various employers from 1963-1985, including the named employer. Claimant, his widow, alleged that he was exposed to asbestos at work and developed cancer as a result of that exposure. Tr. at 22-23, 27, 34, 42, 46, 88. The death certificate lists thyroid cancer with metastases as the only cause of decedent's death on January 22, 1996. Emp. Ex. 16 at 1 (Signal); Cl. Ex. 11. Claimant filed a claim for disability benefits on behalf of the decedent on June 7, 1996, and for death benefits on November 4, 1996. Emp. Ex. 1 at 1 (Signal); Cl. Ex. 4. The administrative law judge denied claimant's claims, finding that the decedent's disability and death were not due to asbestos exposure. The administrative law judge found it unnecessary to address the timeliness and responsible carrier issues but nonetheless pointed out that Louisiana Stevedore, which was not a party to the claim, would be the responsible employer as decedent was last exposed to asbestos while in its employ in 1974. On appeal, claimant challenges the administrative law judge's denial of disability and death benefits. Employer, through two of its carriers, Signal and National Ben Franklin, responds in support of the administrative law judge's decision.

Claimant argues that the administrative law judge erred in finding the Section 20(a) presumption rebutted based on Dr. Jones's opinion and in finding that the weight of the evidence does not establish that the decedent's disability and death were work-related. Section 20(a) of the Act presumes, in the absence of substantial evidence to the contrary, that claims for disability and death benefits come within the provisions of the Act, *i.e.*, that the disability and death were work-related. *See Sprague v. Director, OWCP*, 688 F.2d 862, 15

BRBS 11(CRT) (1<sup>st</sup> Cir. 1982). Once, as in the instant case, the Section 20(a) presumption is invoked, the burden shifts to employer to rebut the presumption with substantial evidence that the decedent's employment did not cause, contribute to, or hasten his disability or death. *See Peterson v. General Dynamics Corp.*, 25 BRBS 71 (1991)(*en banc*), *aff'd sub nom. Ins. Co. of North America v. U.S. Dept. of Labor*, 969 F.2d 1400, 26 BRBS 14(CRT) (2<sup>d</sup> Cir. 1992), *cert. denied*, 507 U.S. 909 (1993); *see also Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4<sup>th</sup> Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993); *Fineman v. Newport News Shipbuilding & Dry Dock Co.*, 27 BRBS 104 (1993). If employer produces substantial evidence severing the connection between the disability, death, and the employment, the presumption no longer controls and the issue of causation must be resolved on the whole body of proof, with claimant bearing the burden of persuasion. *See Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4<sup>th</sup> Cir. 1997); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

The administrative law judge found that employer established rebuttal of the Section 20(a) presumption based on Dr. Jones's opinion. Dr. Jones opined in his March 24, 2004, report that decedent died of disseminated thyroid cancer, a type of cancer not related to asbestos exposure, and he stated that there is inadequate evidence to establish a diagnosis of any asbestos-related disease or condition. Emp. Ex. 21 at 2 (Signal). In his supplemental April 15, 2004, report, which the administrative law judge quoted extensively in his decision, Dr. Jones stated that he had reviewed all of the decedent's medical records and that they confirm the diagnosis of lung metastases from thyroid cancer. Emp. Ex. 22 (Signal). As Dr. Jones's opinion is substantial evidence to establish that the decedent's disability and/or death were not caused, contributed to, or hastened by asbestos exposure, we affirm the administrative law judge's rebuttal finding. *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5<sup>th</sup> Cir.), *cert. denied*, 540 U.S. 1056 (2003); *Bath Iron Works Corp. v. Director, OWCP [Harford]*, 137 F.3d 673, 32 BRBS 45(CRT) (1<sup>st</sup> Cir. 1998).

We also affirm the administrative law judge's finding that claimant did not establish, by a preponderance of the evidence, that decedent's employment caused or contributed to his thyroid cancer. The administrative law judge discussed the medical records contained in Claimant's Exhibit 4, but found there is no evidence therein specifically relating decedent's disability and/or death to any condition caused by asbestos exposure. The administrative law judge found that diagnoses of conditions consistent with asbestos exposure do not establish that decedent's disability and death due to cancer were caused by such exposure.<sup>1</sup> As neither

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<sup>1</sup> A chest x-ray dated August 23, 1994, was read by Dr. Holstein as showing scarring of the type frequently caused by asbestos in the lungs. Cl. Ex. 4. On January 13, 1995, Dr. Gomes reviewed the August 1994 x-ray and interpreted it as showing abnormalities consistent with but not diagnostic of pneumoconiosis. *Id.* On October 6, 1994, Dr. Hebert recorded that decedent had a significant history of asbestos exposure and stated that he may have pneumoconiosis. *Id.*

the medical evidence set out in Claimant's Exhibit 4 nor any other evidence of record establishes that the decedent's disability and death were related to asbestos exposure, we affirm the administrative law judge's conclusion that there is no evidence to establish the required causal nexus. *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171 (2001); Decision and Order at 3-5; Emp. Exs. 21 at 2, 22 (Signal); Cl. Ex. 4. As claimant did not establish that decedent's disability and death were work-related, we affirm the denial of benefits.

Accordingly, the administrative law judge's Decision and Order denying disability and death benefits is affirmed.<sup>2</sup>

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge

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<sup>2</sup> Based on our affirmance of the finding that the decedent's disability and death were not work-related, it is unnecessary to address the timeliness and responsible employer issues raised by the parties.